

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL)	
INDUSTRY AVERAGE)	
WHOLESALE PRICE LITIGATION)	MDL No. 1456
_____)	Master File No. 1:01-CV-12257-PBS
)	Sub-Category Case No. 1:08-CV-11200
THIS DOCUMENT RELATES TO:)	
<i>United States ex rel. Linnette Sun and</i>)	Judge Patti B. Saris
<i>Greg Hamilton, Relators</i>)	
<i>v.</i>)	
<i>Baxter Hemoglobin Therapeutics;</i>)	
<i>Baxter International Inc.; Baxter</i>)	
<i>Healthcare Corporation</i>)	
_____)	

DECLARATION OF TERRY F. MORITZ

I, Terry F. Moritz, under penalties as provided in 28 U.S.C. § 1746, hereby certify that the following statements are true and correct:

1. I am a principal in the law firm of Goldberg Kohn Ltd. On December 2, 2011, I, along with my partner, David J. Chizewer, were admitted to practice before this Court *pro hac vice* in order to serve as additional counsel to Relators, Linnette Sun and Greg Hamilton.

2. I had no constructive or actual notice that Baxter was taking the position that its settlement agreement with Ven-A-Care operated to release Relators' claims in this lawsuit, until Baxter filed its summary judgment motion on October 19, 2011.

3. On April 27, 2012, after he read a transcript of the April 25, 2012 hearing, Jim Breen, counsel for Ven-A-Care, sent my partner, David J. Chizewer, an e-mail, reminding him of an earlier e-mail from our co-counsel, Mr Kleiman, dated October 7, 2011.

In that October 7, 2011 e-mail message, Mr. Kleiman congratulated Mr. Breen on his settlement with Baxter, and asked Mr. Breen what drugs his settlement covered. I was copied on Mr. Kleiman's e-mail message to Mr. Breen. I am advised that Mr. Breen has acknowledged that he never responded to Mr. Kleiman's inquiry. Also on October 7, 2011, Mr. Kleiman posted the motion for dismissal in Ven-A-Care and the settlement documents on a protected shared internet site to which I had access. That posting was 11 days prior to the date Baxter filed its summary judgment motion in this case based on the Ven-A-Care settlement. A copy of Mr. Kleiman's October 7, 2011 e-mail is attached hereto as Exhibit A.

4. On, February 16, 2012, Relators filed their motion to reconsider the order granting summary judgment to Baxter. Mr. Chizewer was the lawyer principally responsible for that motion and brief, as well as the motion to file a reply brief (on February 27, 2012) and the actual reply brief (on February 28, 2012). I reviewed and commented on the various pleadings that were filed. Relators' motion to reconsider contains a statement that is incorrect. It says that "Despite the fact that Relators had pending *qui tam* claims, Relators Sun and Hamilton had no notice of the settlement agreement, were not given the opportunity to participate in any meaningful hearing, and therefore had no opportunity to address the adequacy of the settlement or claim a share of the settlement proceeds." Almost all of that remains true. However, we should have written that Sun and Hamilton had no notice that Baxter intended the settlement agreement to release Relators' claims in this lawsuit.

FURTHER AFFIANT SAYETH NOT.

Dated: April 30, 2012

/s/ Terry F. Moritz

Terry F. Moritz

Terry F. Moritz
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EXHIBIT A

From: Mark Kleiman <mkleiman@quitam.org>
Sent: Friday, October 07, 2011 6:04 PM
To: Jim Breen
Cc: Rick Morgan; Chizewer, David; Jennifer Verkamp; psavoie@quitam.org; Moritz, Terry; ludden@jlaw.com
Subject: Congratulations

Jim,

Nice to see your settlement finalized. I'm trying to do some calculations of my own and have looked in vain for the list of "Baxter Covered Drugs" referred to in the settlement documents.

Any hints?

Thanks,

Mark

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